

TIGARD MUNICIPAL CODE

Chapter 7.40 NUISANCES.

ARTICLE I. GENERAL PROVISIONS

- 7.40.010 Short Title.**
- 7.40.020 Definitions.**
- 7.40.030 Nuisances Designated--Class 1 Infraction.**

ARTICLE II. PUBLIC HEALTH NUISANCES

- 7.40.040 Nuisances Affecting The Public Health.**

ARTICLE III. NUISANCES AFFECTING PUBLIC SAFETY.

- 7.40.050 Noxious Vegetation.**
- 7.40.060 Trees.**
- 7.40.070 Streets And Sidewalks.**
- 7.40.080 Vehicles Not To Drop Material On Streets.**
- 7.40.090 Greenway Maintenance.**
- 7.40.100 Open Storage Of Junk.**
- 7.40.110 Attractive Nuisances.**
- 7.40.120 Scattering Rubbish.**
- 7.40.125 Graffiti.**

ARTICLE IV. NUISANCES AFFECTING THE PUBLIC PEACE

- 7.40.130 Prohibition On Excessive Noises.**
- 7.40.140 Sound Measurement.**
- 7.40.150 Definitions.**
- 7.40.160 Noise Limits.**
- 7.40.170 Prohibited Noises.**
- 7.40.180 Exceptions.**
- 7.40.190 Maximum Limit For Certain Activities.**
- 7.40.200 Evidence.**

ARTICLE VI. VIOLATION--PENALTY

7.40.210 Penalty For Chapter Violations.

ARTICLE I. GENERAL PROVISIONS

7.40.010 Short Title.

The ordinance codified in this chapter shall be known as the "nuisance ordinance," and may also be referred to herein as "this chapter." (Ord. 86-20 §4(Exhibit C(1)), 1986).

7.40.020 Definitions.

As used in this chapter:

A. "Responsible party" means the person responsible for curing or remedying a nuisance, which includes:

1. The owner of the property, or the owner's manager or agent or other person in control of the property on behalf of the owner;

2. The person occupying the property, including bailee, lessee, tenant or other person having possession;

3. The person who is alleged to have committed the acts or omissions, created or allowed the condition to exist, or placed the object or allowed the object to exist on the property. (Ord. 86-20 §4(Exhibit C(2)), 1986).

7.40.030 Nuisances Designated--Class 1 Infraction.

A. The acts, omissions, conditions or objects specifically enumerated in this chapter are hereby declared to be a public nuisance.

TIGARD MUNICIPAL CODE

B. In addition to the nuisances specifically enumerated within this chapter, every other thing, substance or act which is determined by the Council to be offensive, injurious or detrimental to the public health, safety or welfare of the City is declared to be a nuisance.

C. All nuisances shall constitute a Class 1 civil infraction and shall be processed according to the procedures established in Chapter 1.16 of this code, Civil Infractions. (Ord. 86-20 §4(Exhibit C(3)), 1986).

ARTICLE II. PUBLIC HEALTH NUISANCES.

7.40.040 Nuisances Affecting The Public Health.

No person shall cause or permit a nuisance affecting the public health. The following are nuisances affecting the public health:

A. Privies. An open vault or privy constructed and maintained within the City, except those constructed or maintained in connection with construction projects in accordance with the State Health Division regulations;

B. Debris. Accumulations of debris, rubbish, manure and other refuse that affect the health of surrounding persons;

C. Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests;

D. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes, or other substances placed in or near the water in a manner that will cause harmful material to pollute the water;

E. Odor. Any animal, substance or condition on the premises that is in such a state or condition as to cause an offensive odor detectable at a property line, or that is in an insanitary condition;

F. Surface Drainage. Drainage of liquid wastes from private premises;

G. Cesspools. Cesspools or septic tanks that are in an unsanitary condition or which cause an offensive odor;

H. Animals. Animals, including livestock or buildings for the purpose of maintaining livestock or animals, maintained in such places or in such a manner that they are offensive or annoying to the residents within the immediate vicinity, or maintaining the premises in such a manner as to be a breeding place or likely breeding place for rodents, flies and other pests;

I. Removal of Carcasses. An animal carcass permitted to remain on public property or to be exposed on public property for a period of time longer than is necessary to remove or dispose of the carcass.

J. Maintenance on Private Property of a Dangerous Building. A "dangerous building" is one or more of the following:

1. A structure that, for the want of proper repairs or by reason of age and dilapidated condition, by reason of poorly installed electrical wiring or equipment, defective chimney, defective gas connection, defective heating apparatus, or for any other cause or reason, is especially liable to fire, and that is so situated or occupied as to endanger any other building or property or human life;

2. A structure containing combustible or explosive material, rubbish, rags, waste, oils, gasoline or flammable substance of any kind,

TIGARD MUNICIPAL CODE

especially liable to cause fire or danger to the safety of the building, premises, or to human life;

3. A structure that is kept or maintained or is in a filthy or unsanitary condition, especially liable to cause the spread of contagious or infectious disease or diseases;

4. A structure in such weak or weakened condition, or dilapidated or deteriorated condition as to endanger any person or property by reason of probability of partial or entire collapse. (Ord. 86-39 §1(Exhibit A), 1986; Ord. 86-20 §4(Exhibit C(4)), 1986).

ARTICLE III. NUISANCES AFFECTING PUBLIC SAFETY.

7.40.050 Noxious Vegetation.

A. The term "noxious vegetation" does not include vegetation that constitutes an agricultural crop, unless that vegetation is a health hazard, a fire hazard or a traffic hazard, and it is vegetation within the meaning of Subsection B of this section.

B. The term "noxious vegetation" includes:

1. Weeds more than ten inches high;
2. Grass more than ten inches high and not within the exception stated in Subsection A of this section;
3. Poison oak, poison ivy, or similar vegetation;
4. Dead trees, dead bushes, stumps and any other thing likely to cause fire;
5. Blackberry bushes that extend into a public thoroughfare or across a property line;
6. Vegetation that is a health hazard;

7. Vegetation that is a health hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous.

C. No owner or responsible party shall allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting on the property. The owner or responsible party shall cut down or destroy grass, shrubbery, brush, bushes, weeds or other noxious vegetation as often as needed to prevent them from becoming unsightly or, in the case of weeds or other noxious vegetation, from maturing or from going to seed. (Ord. 86-20 §4(Exhibit C(5)(1)), 1986).

7.40.060 Trees.

A. No owner or responsible party shall permit tree branches or bushes on the property to extend into a public street or public sidewalk in a manner which interferes with street or sidewalk traffic. It shall be the duty of an owner or responsible party to keep all tree branches or bushes on the premises which adjoin the public street or public sidewalk, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than ten feet above the street.

B. No owner or responsible party shall allow to stand any dead or decaying tree that is in danger of falling or otherwise constitutes a hazard to the public or to persons or property on or near the property. (Ord. 86-20 §4(Exhibit C(5)(2)(a) and (b)), 1986).

7.40.070 Streets And Sidewalks.

The owner or responsible party shall keep a public street and/or sidewalk abutting their property free from earth, rock and other debris and other objects that may obstruct or render the street or sidewalk unsafe for its intended use.

TIGARD MUNICIPAL CODE

(Ord. 86-20 §4(Exhibit C(5)(2)(c)), 1986).

7.40.080 Vehicles Not To Drop Material On Streets.

The owner or operator of any vehicle engaged in the transportation of excavation or construction materials shall be responsible for keeping the public streets and sidewalks free from such materials, including but not limited to, earth, rock and other debris that may obstruct or render the street or sidewalk unsafe for its intended use. (Ord. 86-20 §4(Exhibit C(5)(2)(d)), 1986).

7.40.090 Greenway Maintenance.

A. The owner or responsible party shall be responsible for the maintenance of the property, subject to an easement to the City or to the public for greenway purposes. Except as otherwise provided by this section and Sections 7.40.050 through 7.40.120, the standards for maintenance shall be as follows:

1. The land shall remain in its natural topographic condition. No private structures, culverts, excavations or fills shall be constructed within the easement area unless authorized by the City Engineer based on a finding of need in order to protect the property or the public health, safety or welfare.

2. No tree over five feet in height shall be removed unless authorized by the Planning Director based on a finding that the tree constitutes a nuisance or a hazard.

3. Grass shall be kept cut to a height not exceeding ten inches, except when some natural condition prevents cutting.

B. In situations where the approval authority establishes different standards or additional standards, the standards shall be in writing and shall be recorded. No person shall be

found in violation of this section of the code unless the person has been given actual or constructive notice of the standards prior to the time the violation occurred. (Ord. 86-20 §4(Exhibit C(5)(3)), 1986).

7.40.100 Open Storage Of Junk.

No person or responsible party shall deposit, store, maintain or keep on any real property, except in a fully enclosed storage facility, building or garbage receptacle, any of the following:

A. An icebox or refrigerator, or similar container, which seals essentially airtight, without first removing the door;

B. Inoperable, partially dismantled automobiles, trucks, bus, trailer or other vehicle equipment or parts thereof in a state of disrepair, for more than ten days as to any one automobile, truck, bus, trailer or piece of vehicular equipment;

C. Used or dismantled household appliances, furniture, other discards or junk, for more than five days. (Ord. 86-20 §4(Exhibit C(5)(4)), 1986).

7.40.110 Attractive Nuisances.

A. No owner or responsible party shall permit on the property:

1. Unguarded machinery, equipment or other devices which are attractive, dangerous, and accessible to children;

2. Lumber, logs, building material or piling placed or stored in a manner so as to be attractive, dangerous, and accessible to children;

3. An open pit, quarry, cistern, or other excavation without safeguards or barriers to prevent such places from being used by children; or

TIGARD MUNICIPAL CODE

4. An exposed foundation or portion of foundation, any residue, debris or other building or structural remains, for more than thirty days after the destruction, demolition or removal of any building or portion of the building.

B. This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children. (Ord. 86-20 §4(Exhibit C(5)(5)), 1986).

7.40.120 Scattering Rubbish.

No person shall deposit upon public or private property any kind of rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal, or vehicle traveling upon a public way. (Ord. 86-20 §4(Exhibit C(5)(6)), 1986).

7.40.125 Graffiti

A. Definitions.

As used in this section, unless the context requires otherwise:

1. "Abate" means to remove graffiti from the public view.

2. "Graffiti" means any inscription, word, figure, or design that is marked, etched, scratched, drawn or painted on any surface with paint, ink, chalk, dye, other similar substance or placement of stickers or appliques, regardless of content, which is visible from premises open to the public, such as public right of ways or other publicly owned property, and that has been placed upon any real or personal property, such as buildings, fences, and structures, without authorization from the owner or responsible party.

3. "Graffiti nuisance property" means a property upon which graffiti has been placed and

such graffiti has been permitted to remain for more than 14 days after the property owner of record or occupant has been issued written notification.

4. "Manager" means the Tigard City Manager or the manager's designee who is responsible for the administration of the graffiti nuisance abatement program under this chapter.

5. "Occupant" means any person, tenant, sublessee, successor or assignee that has control over property.

6. "Owner" means any person, agent, firm or corporation having a legal or equitable interest in a property and includes but not limited to a mortgagor in possession, an occupant, or a person, agent, firm or corporation that owns or exercises control over items of property such as utility poles, drop boxes, postal collection boxes, and other types of containers.

7. "Permit" means to knowingly allow, suffer, or acquiesce by any failure, refusal, or neglect to abate.

8. "Premises open to the public" means all public spaces, including but not limited to streets, alleys, sidewalks, parks, rights of way and public open space, and private property onto which the public is regularly invited or permitted to enter for any purpose.

9. "Property" means any real or personal property, including but not limited to items affixed or appurtenant to real property or premises, house, building, fence or structure and items of machinery, drop boxes, waste containers, utility poles and vaults, and post office collection boxes.

10. "Responsible party" means an owner, an entity or person acting as an agent for an owner by agreement that has authority over the property or

TIGARD MUNICIPAL CODE

is responsible for the property's maintenance or management. There may be more than one party responsible for a particular property.

11. "Unauthorized" means without consent of the owner, occupant or responsible party.

B. Graffiti Nuisance Property

1. Any property location in the City of Tigard that becomes a graffiti nuisance property is in violation of this section and is subject to its remedies.

2. Every responsible party who permits a property to become a graffiti nuisance property is in violation of this section and subject to its remedies.

C. Graffiti Removal; Notice and Procedures

1. This subsection sets out procedures to be used in processing an infraction of Section 7.40.125, notwithstanding Subsections 7.40.030.C and 1.16.060.2 of this Code. Except as provided herein, other applicable provisions of Chapter 1.16 shall remain in effect.

2. The owner or occupant of any property within the City of Tigard shall remove any graffiti from that property within 14 days of the graffiti's appearance.

3. Whenever the Manager determines that graffiti exists on any property in the City, the Manager may issue an abatement notice. The owner or occupant shall have 14 days after the date of service of the notice to remove the graffiti.

4. The notice shall be served by addressing the notice to the owner or occupant and delivering it by personal service or by mailing it as certified mail. Service may also be accomplished by

posting the notice in a clearly visible location on the subject property.

5. If the person who was served the notice is unable to remove, or cause to remove, the graffiti within the 14-day period due to a hardship, he or she may apply to the Manager for an extension of time in which to remove the graffiti. For purposes of this subsection, "hardship" includes but is not limited to serious illness or disability, extremely inclement weather that temporarily prevents removal of the graffiti, or other extraordinary circumstance.

6. If the graffiti is not removed within 14 days after serving notice on the owner or occupant, the Manager may cause a citation to be issued to the owner or occupant or both requiring the person to appear in Tigard Municipal Court.

7. Failure to remove the graffiti as required by this section is a violation punishable by a fine of up to one hundred dollars. Each day the graffiti remains after the notice is sent constitutes a separate offense.

8. The City Manager may adopt rules and procedures to implement this section. (Ord. 07-03)

ARTICLE IV. NUISANCES AFFECTING THE PUBLIC PEACE

7.40.130 Prohibition On Excessive Noises.

No person shall make, assist in making, permit, continue, or permit the continuance of, any noise within the City of Tigard in violation of this article. No person shall cause or permit any noise to emanate from property under that person's control in violation of this article. (Repealed and replaced by Ord. 01-13A, Ord. 96-06; Ord. 90-03 §1(part), 1990).

TIGARD MUNICIPAL CODE

7.40.140 Sound Measurement.

A. While sound measurements are not required for the enforcement of this article, should measurements be made, they shall be made with a sound level meter. The sound level meter:

1. Shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter;

2. Shall contain at least an A-weighted scale, and both fast and slow meter response capability.

B. If measurements are made, the person making those measurements shall have completed training in the use of the sound level meter, and shall use measurement procedures consistent with that training. (Repealed and replaced by Ord. 01-13A, Ord 90-03 §1(part), 1990).

7.40.150 Definitions.

As used in this Article:

A. “Noise-sensitive unit” shall include any building or portion of a building containing a residence, place of overnight accommodation, church, day care center, hospital, school, or nursing care center. For the purpose of this definition, “residence” and “overnight accommodation” does not include living/sleeping quarters of a caretaker or watchperson on industrial or commercial property provided by the owner or operator of the industrial or commercial facility.

B. “Plainly audible” means any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehensible musical rhythms or vocal sounds.

C. “Unnecessarily loud” means any sound

that interferes with normal spoken communication or that disturbs sleep.

D. “City Manager” means the City Manager or designee. (Repealed and replaced by Ord. 01-13A, Ord. 90-03 §51(part), 1990).

7.40.160 Noise Limits.

It is unlawful for any person to produce, or permit to be produced, sounds which:

A. When measured at the boundary of or within a property on which a noise sensitive unit, not the source of the sound, is located, exceeds:

1. Forty dB at any time between nine p.m. and seven a.m. the following day; or

2. Fifty dB at any time between seven a.m. and nine p.m. the same day; or

B. Is plainly audible at any time between nine p.m. and seven a.m. the following day within a noise-sensitive unit which is not the source of sound; or

C. Is unnecessarily loud within a noise-sensitive unit which is not the source of the sound.

D. When measured at or within the boundary of or within a property on which no noise-sensitive unit is located, and the noise originates from outside the property, if the noise level exceeds:

1. Sixty dB at any time between nine p.m. and seven a.m. of the following day; or

2. Seventy-five dB at any other time.

E. If within a park, street or other public place, is unnecessarily loud at a distance of 100 feet. (Repealed and replaced by Ord. 01-13A, Ord. 90-03 §1(part), 1990).

TIGARD MUNICIPAL CODE

7.40.170 Prohibited Noises.

A. The use of exhaust brakes (jake brakes), except in an emergency or except when used by a person operating an emergency services vehicle equipped with a muffled compression braking system, is prohibited at all times within the City, regardless of noise level.

B. Except as provided in Section 7.40.180, the following acts are violations of this chapter if they exceed the noise limits specified in Section 7.40.160:

1. The sounding of any horn or signal device or any other device on any automobile, motorcycle, truck, bus or other vehicle while in motion, except as a danger signal.

2. The operation of sound-producing devices such as, but not limited to, musical instruments, loudspeakers, amplifying devices, public address systems, radios, tape recorders and/or tape players, compact disc players, phonographs, television sets and stereo systems, including those installed in or on vehicles.

3. The operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades.

4. The use of any automobile, motorcycle or other vehicle so out of repair or in such a manner as to create loud or unnecessary sounds, grating, grinding, rattling or other noise.

5. The keeping of any animal or bird that creates noise in excess of the levels specified in Section 7.40.160.

6. The operation of air conditioning or heating units, heat pumps, refrigeration units, (including those mounted on vehicles) and swimming pool or hot tub pumps.

7. The erection (including excavation), demolition, alteration or repair of any building, except as allowed under Sections 7.40.180.E and 7.40.180.F.

8. The use or creation of amplified sound in any outdoor facility.

9. Any other action that creates or allows sound in excess of the level allowed by Section 7.40.160. (Ord. 06-03; Repealed and replaced by Ord. 01-13A, Ord. 96-06; Ord. 90-03 §1(part), 1990).

7.40.180 Exceptions.

The following shall not be considered violations of this article, even if the sound limit specified in Section 7.40.160 is exceeded:

A. Non-amplified sounds created by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, such as stadiums, parks, schools, and athletic fields, during normal hours for such events.

B. Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property.

C. Sounds caused by bona fide use of emergency warning devices and alarm systems.

D. Sounds regulated by federal law, including, but not limited to, sounds caused by railroads or aircraft.

E. Sounds caused by demolition activities when performed under a permit issued by appropriate governmental authorities and only between the hours of seven a.m. and seven p.m.

TIGARD MUNICIPAL CODE

seven days a week.

F. Sounds caused by industrial, agricultural or construction activities during the hours of seven a.m. to seven p.m. seven days a week.

G. Sounds caused by regular vehicular traffic upon premises open to the public in compliance with state law. Regular vehicle traffic does not include a single vehicle that creates noise in excess of the standard set forth in Section 7.40.160.

H. Sounds caused by air-, electrical- or gas-driven domestic tools, including, but not limited to, lawn mowers, lawn edgers, radial arm, circular and table saws, drills, and/or other similar lawn or construction tools, but not including tools used for vehicle repair, during the hours of seven a.m. to seven p.m. seven days a week.

I. Sounds caused by chainsaws, when used for pruning, trimming or cutting of live trees between the hours of seven a.m. and seven p.m., and not exceeding two hours in any twenty-four hour period seven days a week.

J. Sounds created by community events, such as parades, public fireworks displays, street fairs, and festivals that the City Manager or designee has determined in writing to be community events for the purposes of this section. The City Manager's decision shall be based on the anticipated number of participants or spectators, the location of the event and other factors the City Manager determines to be appropriate under the circumstances.

K. Sounds made by legal fireworks on the third of July, Fourth of July, and the Friday and Saturday during the weekend closest to the Fourth of July of each year, between the hours of seven a.m. and eleven p.m.

L. Sounds made between midnight and

12:30 a.m. on January 1 of each year.

M. Sounds originating from construction projects for public facilities within rights of way pursuant to a noise mitigation plan approved by the City Manager. The noise mitigation plan must:

1. Map the project noise impacts and explain how the impacts will be mitigated;
2. Provide special consideration and mitigation efforts for noise sensitive units;
3. Outline public notification plans;
4. Provide a 24-hour telephone contact number for information and complaints about a project.

The City Manager may approve a noise mitigation plan only if the City Manager determines that the noise mitigation plan will prevent unreasonable noise impacts. (Ord. 05-14; repealed and replaced by Ord. 01-13A, Ord 90-03 §1(part), 1990).

7.40.190 Maximum Limit For Certain Activities.

Notwithstanding Section 7.40.180, the creation of noise by any activity subject to the exceptions listed in Sections 7.40.180.E, 7.40.180.F, 7.40.180.H, or 7.40.180.I, in excess of 85 dB measured on property on which a noise sensitive use is located, for more than 5 minutes in any calendar day shall be a violation. (Repealed and replaced by Ord. 01-13A, Ord. 99-29; Ord. 96-06; Ord. 90-03 §1(part), 1990).

7.40.200 Evidence.

In any civil infraction action based on a violation of the limits set forth in Sections 7.40.160.B, 7.40.160.C or 7.40.160.E, the evidence of at least two persons from different

TIGARD MUNICIPAL CODE

households, shall be required to establish a violation. Any Police or Code Enforcement Officer or other City employee who witnessed the violation shall be counted as a witness for purposes of the two witness requirement. The City may ask an alleged violator to enter into a voluntary compliance agreement based on a single complaint or single witness. (Repealed and replaced by Ord. 01-13A, Ord. 99-29; Ord. 96-06; Ord. 90-03 §1(part), 1990).

ARTICLE VI. VIOLATION--PENALTY

7.40.210 Penalty For Chapter Violations.

A. A violation of this chapter shall constitute a Class 1 civil infraction, which shall be processed according to the procedures established in the civil infractions ordinance, set out at Chapter 1.16 of this code.

B. Each violation of a separate provision of this chapter shall constitute a separate infraction, and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate infraction.

C. A finding of a violation of this chapter shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City.

D. If a provision of this chapter is violated by a firm or corporation, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this chapter. (Ord. 99-01; Ord. 90-03 §1(part), 1990).■